

AMENDED IN ASSEMBLY JULY 6, 2005

AMENDED IN ASSEMBLY JUNE 21, 2005

AMENDED IN SENATE APRIL 27, 2005

AMENDED IN SENATE MARCH 29, 2005

## **SENATE BILL**

**No. 2**

### **Introduced by Senator Speier**

December 6, 2004

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An act to amend Sections 2051.5, 10089.70, 10089.79, 10089.80, and 10089.82 of, and to add Sections 124.5, 791.135, 1749.85, 2059, and 2060 to, and to repeal Section 10089.84 of, the Insurance Code, relating to homeowners' insurance.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 2, as amended, Speier. Homeowners' insurance: valuation: continuing education.

~~Existing law establishes specified standards for the collection, use, and disclosure of information gathered in connection with insurance transactions by insurers, agents, and insurance-support organizations.~~

~~This bill would prohibit an insurer from submitting a report of a claim filed under a homeowners' insurance policy to an insurance-support organization whose primary source of information is insurance institutions unless the insurer has provided the insured with a copy of the report before submitting it to the insurance-support organization, except as specified.~~

Existing law requires an applicant for a fire and casualty broker-agent license to complete courses in a prelicensing curriculum, and to pass an examination. Existing law requires fire and casualty broker-agents to meet specified continuing education requirements.

This bill would require the curriculum committee of the Department of Insurance, in 2006, to make recommendations to the Insurance Commissioner to instruct fire and casualty broker-agents and personal lines broker-agents, and applicants for fire and casualty and personal lines broker-agent licenses, in proper methods of estimating the replacement value of structures, and of recommending appropriate levels of coverage under a homeowners' insurance policy.

Existing law provides that, under a specified type of homeowners' insurance policy, when a state of emergency has been declared, no time limit of less than 24 months from the date that the first payment toward the actual cash value is made shall be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit.

~~This bill would also apply this 24-month minimum period, with respect to certain policies, to the collection of the full additional living expenses for loss of use provide, in addition, as of January 1, 2007, that if a state of emergency has been declared, coverage for additional living expenses shall be extended for a period of up to 24 months from the date of loss, subject to other policy provisions. It would prohibit a policy from containing a provision that limits the maximum coverage for additional living expenses to a time period of less than 24 months.~~

~~Existing law generally regulates the terms of homeowners' insurance policies.~~

~~This bill would prohibit a homeowners' insurance policy issued, delivered, or renewed in this state on or after July 1, 2006, from containing a provision that, in the event of a total loss of the insured structure due to fire caused by an event for which a state of emergency has been declared, limits payment for the loss of personal property to an amount less than 85% of the policy limits for personal property loss, or that requires the insured to supply an itemized list or inventory of personal property to obtain a final settlement for that loss in such an amount.~~

The bill would require an insurer, in the event of a loss under a homeowners' insurance policy for which the insured has made a claim for additional living expenses, to provide the insured with a list of items that the insurer believes may be covered under the policy as additional living expenses.

Existing law establishes, until January 1, 2008, a mediation program for disputes arising out of certain auto insurance, earthquake insurance, and homeowners' insurance claims.

This bill would make this program permanent, and would make specified changes to the homeowners' and earthquake claims to which it applies. The bill would make certain other changes to the provisions governing the mediation program.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 124.5 is added to the Insurance Code, to  
2 read:

3 124.5. "Homeowners' insurance" means insurance covering  
4 the risks described in subdivision (a) of Section 675.

5 ~~SEC. 2. Section 791.135 is added to the Insurance Code, to~~  
6 ~~read:~~

7 ~~791.135. (a) Except as provided in subdivision (b), an insurer~~  
8 ~~shall not submit a report of a claim filed under a homeowners'~~  
9 ~~insurance policy to an insurance support organization whose~~  
10 ~~primary source of information is insurance institutions unless the~~  
11 ~~insurer has provided the insured with a copy of the report before~~  
12 ~~submitting it to the insurance support organization.~~

13 ~~(b) Subdivision (a) shall not apply to any report of a claim that~~  
14 ~~involves suspected fraud by the insured.~~

15 ~~SEC. 3.—~~

16 SEC. 2. Section 1749.85 is added to the Insurance Code, to  
17 read:

18 1749.85. (a) The curriculum committee shall, in 2006, make  
19 recommendations to the commissioner to instruct fire and  
20 casualty broker-agents and personal lines broker-agents and  
21 applicants for fire and casualty broker-agent and personal lines  
22 broker-agent licenses in proper methods of estimating the  
23 replacement value of structures, and of ~~recommending~~  
24 ~~appropriate~~ *explaining various* levels of coverage under a  
25 homeowners' insurance policy. Each provider of courses based  
26 upon this curriculum shall submit its course content to the  
27 commissioner for approval.

28 (b) A person who is not an insurer underwriter or actuary or  
29 other person identified by the insurer, or a licensed fire and  
30 casualty broker-agent, personal lines broker-agent, contractor, or  
31 architect shall not estimate the replacement value of a structure,

1 ~~or recommend an appropriate level~~ *explain various levels of*  
2 *coverage under a homeowners' insurance policy;*

3 ~~SEC. 4.—~~

4 *SEC. 3.* Section 2051.5 of the Insurance Code is amended to  
5 read:

6 2051.5. (a) Under an open policy that requires payment of  
7 the replacement cost for a loss, the measure of indemnity is the  
8 amount that it would cost the insured to repair, rebuild, or replace  
9 the thing lost or injured, without a deduction for physical  
10 depreciation, or the policy limit, whichever is less.

11 If the policy requires the insured to repair, rebuild, or replace  
12 the damaged property in order to collect the full replacement  
13 cost, the insurer shall pay the actual cash value of the damaged  
14 property, as defined in Section 2051, until the damaged property  
15 is repaired, rebuilt, or replaced. Once the property is repaired,  
16 rebuilt, or replaced, the insurer shall pay the difference between  
17 the actual cash value payment made and the full replacement cost  
18 reasonably paid to replace the damaged property, up to the limits  
19 stated in the policy.

20 (b) ~~(1)~~ No time limit of less than 12 months from the date that  
21 the first payment toward the actual cash value is made shall be  
22 placed upon an insured in order to collect the full replacement  
23 cost of the loss, subject to the policy limit. Additional extensions  
24 of six months shall be provided to policyholders for good cause.

25 ~~(2) In the event of a loss relating to a "state of emergency," as~~  
26 ~~defined in Section 8558 of the Government Code, the following~~  
27 ~~provisions apply:~~

28 ~~(A) No cause. In the event of a covered loss relating to a~~  
29 ~~"state of emergency," as defined in Section 8558 of the~~  
30 ~~Government Code, no time limit of less than 24 months from the~~  
31 ~~date that the first payment toward the actual cash value is made~~  
32 ~~shall be placed upon the insured in order to collect the full~~  
33 ~~replacement cost of the loss or, with respect to a policy issued,~~  
34 ~~delivered, or renewed on or after July 1, 2006, the full amount of~~  
35 ~~additional living expenses for loss of use, subject to the policy~~  
36 ~~limit. Nothing in this section shall prohibit the insurer from~~  
37 ~~allowing the insured additional time to collect the full~~  
38 ~~replacement cost or additional living expenses for loss of use.~~  
39 *cost of the loss, subject to the policy limit. Nothing in this section*

1 shall prohibit the insurer from allowing the insured additional  
2 time to collect the full replacement cost.

3 In the event of a covered loss relating to a “state of  
4 emergency,” as defined in Section 8558 of the Government Code,  
5 coverage for additional living expenses shall be extended for a  
6 period of up to 24 months from the date of loss, subject to other  
7 policy provisions. A policy may not contain a provision that  
8 limits the maximum coverage for additional living expenses to a  
9 time period of less than 24 months. This extension shall not act to  
10 increase the additional living expense policy limits in force at the  
11 time of the loss. This paragraph shall become operative on  
12 January 1, 2007.

13 (c) ~~(1)~~—In the event of a total loss of the insured structure, no  
14 policy issued or delivered in this state may contain a provision  
15 that limits or denies payment of the replacement cost in the event  
16 the insured decides to rebuild or replace the property at a location  
17 other than the insured premises. However, the measure of  
18 indemnity shall be based upon the replacement cost of the  
19 insured property and shall not be based upon the cost to repair,  
20 rebuild, or replace at a location other than the insured premises.

21 ~~(2) No policy issued, delivered, or renewed in this state on or~~  
22 ~~after July 1, 2006, may contain a provision that, in the event of a~~  
23 ~~total loss of the insured primary or residence structure due to fire~~  
24 ~~caused by an event for which a state of emergency, as defined in~~  
25 ~~Section 8558 of the Government Code, has been declared, limits~~  
26 ~~payment for the loss of personal property to an amount less than~~  
27 ~~85 percent of the policy limits for personal property loss in final~~  
28 ~~settlement for the loss of personal property, or that requires the~~  
29 ~~insured to supply an itemized list or inventory of personal~~  
30 ~~property to obtain a final settlement for that loss in such an~~  
31 ~~amount.~~

32 (d) Nothing in this section shall prohibit an insurer from  
33 restricting payment in cases of suspected fraud.

34 (e) The changes made to this section by the act that added this  
35 subdivision shall be implemented by an insurer on and after the  
36 effective date of that act, except that an insurer shall not be  
37 required to modify policy forms to be consistent with those  
38 changes until July 1, 2005. On and after July 1, 2005, all policy  
39 forms used by an insurer shall reflect those changes.

1     ~~SEC. 6.—~~

2     *SEC. 4.* Section 2060 is added to the Insurance Code, to read:

3     2060. In the event of a loss under a homeowners' insurance  
4 policy for which the insured has made a claim for additional  
5 living expenses, the insurer shall provide the insured with a list  
6 of items that the insurer believes may be covered under the  
7 policy as additional living expenses. The list may include a  
8 statement that the list is not intended to include all items covered  
9 under the policy, but only those that are commonly claimed, if  
10 this is the case. If the department develops a list for use by  
11 insurers, the insurer may use that list.

12     ~~SEC. 7.—~~

13     *SEC. 5.* Section 10089.70 of the Insurance Code is amended  
14 to read:

15     10089.70. (a) The department shall establish a program for  
16 the mediation of the disputes between insured complainants and  
17 insurers arising pursuant to any of the following:

18     (1) A claim that arises under a homeowners' insurance policy  
19 and that involves loss due to a fire for which the Governor has  
20 declared a state of emergency pursuant to Section 8558 of the  
21 Government Code. The department may refer to mediation any  
22 dispute covered by this paragraph in which the parties to the  
23 contract wish to discuss possible payments beyond policy limits.

24     (2) A claim that arises under a policy covering earthquake  
25 damage and that involves loss due to an earthquake for which the  
26 Governor has declared a state of emergency pursuant to Section  
27 8558 of the Government Code. With respect to disputes arising  
28 under this paragraph, the program shall apply only to personal  
29 lines of insurance related to residential coverage.

30     (3) A claim that arises under automobile collision coverage or  
31 automobile physical damage coverage, in a policy as defined in  
32 Section 660.

33     (b) The goal of the program shall be to favorably resolve a  
34 statistically significant number of disputes sent to mediation  
35 under the program. This section shall not apply to any dispute  
36 that turns on a question of major insurance coverage or a purely  
37 legal interpretation, or any dispute involving the actions of an  
38 agent or broker in which the insurer is not alleged to have been  
39 responsible for the conduct, or any complaint the commissioner

1 finds to be frivolous, or any dispute in which a party is alleged to  
2 have committed fraud.

3 ~~SEC. 8.—~~

4 *SEC. 6.* Section 10089.79 of the Insurance Code is amended  
5 to read:

6 10089.79. (a) The costs of mediation shall be reasonable, and  
7 shall be borne by the insurer, except as provided in Section  
8 10089.81. The commissioner may set a fee not to exceed one  
9 thousand five hundred dollars (\$1,500) for each homeowners' or  
10 earthquake coverage dispute mediated pursuant to this chapter,  
11 and seven hundred dollars (\$700) for each automobile coverage  
12 dispute mediated pursuant to this chapter.

13 (b) The administrative expenses for the mediation program  
14 shall be paid from existing resources available to the department.  
15 If additional resources are required by the department, those  
16 resources shall be made available by an annual appropriation in  
17 the Budget Act.

18 ~~SEC. 9.—~~

19 *SEC. 7.* Section 10089.80 of the Insurance Code is amended  
20 to read:

21 10089.80. (a) The representatives of the insurer shall know  
22 the facts of the case and be familiar with the allegations of the  
23 complainant. The insurer or the insurer's representative shall  
24 produce at the settlement conference a copy of the policy and all  
25 documents from the claims file relevant to the degree of loss,  
26 value of the claim, and the fact or extent of damage. For disputes  
27 mediated pursuant to paragraph (1) of subdivision (a) of Section  
28 10089.70, the department shall refer to mediation issues related  
29 to the settlement of the claim. The insured and insurer shall  
30 produce, to the extent available, documents relevant to the  
31 successful mediation of the claim, including documents related to  
32 the degree of loss, the value of the claim, and the fact or extent of  
33 damage.

34 The mediator may also order production of other documents  
35 that the mediator determines to be relevant to the issues under  
36 mediation. If a party declines to comply with that order, the  
37 mediator may appeal to the commissioner for a determination of  
38 whether the documents requested should be produced. The  
39 commissioner shall make a determination within 21 days.  
40 However, the party ordered to produce the documents shall not

1 be required to produce while the issue is before the commissioner  
2 in this 21-day period. If the ruling is in favor of production, any  
3 insurer that is subject to an order to participate in mediation  
4 issued under subdivision (a) of Section 10089.75 shall comply  
5 with the order to produce. Insureds, and those insurers that are  
6 not subject to an order to participate in mediation, shall produce  
7 the documents or decline to participate further in the mediation  
8 after a ruling by the commissioner requiring the production of  
9 those other documents. Declination of mediation by the insurer  
10 under this section may be considered by the commissioner in  
11 exercising authority under subdivision (a) of Section 10089.75.

12 The mediator shall have the authority to protect from  
13 disclosure information that the mediator determines to be  
14 privileged, including, but not limited to, information protected by  
15 the attorney-client or work-product privileges, or to be otherwise  
16 confidential.

17 (b) The mediator shall determine prior to the mediation  
18 conference whether the insured will be represented by counsel at  
19 the mediation. The mediator shall inform the insurer whether the  
20 insured will be represented by counsel at the mediation  
21 conference. If the insured is represented by counsel at the  
22 mediation conference, the insurer's counsel may be present. If  
23 the insured is not represented by counsel at the mediation  
24 conference, then no counsel may be present.

25 (c) Section 703.5 and Chapter 2 (commencing with Section  
26 1115) of Division 9 of the Evidence Code apply to a mediation  
27 conducted under this chapter.

28 (d) The statements made by the parties, negotiations between  
29 the parties, and documents produced at the mediation are  
30 confidential. However, this confidentiality shall not restrict the  
31 access of the department to documents or other information the  
32 department seeks in order to evaluate the mediation program or  
33 to comply with reporting requirements. This subdivision does not  
34 affect the discoverability or admissibility of documents that are  
35 otherwise discoverable or admissible.

36 ~~SEC. 10.—~~

37 *SEC. 8.* Section 10089.82 of the Insurance Code is amended  
38 to read:

39 10089.82. (a) An insured may not be required to use the  
40 department's mediation process. An insurer may not be required



1 to use the department's mediation process, except as provided in  
2 Section 10089.75.

3 (b) Neither the insurer nor the insured is required to accept an  
4 agreement proposed during the mediation.

5 (c) If the parties agree to a settlement agreement, the insured  
6 will have three business days to rescind the agreement.  
7 Notwithstanding Chapter 2 (commencing with Section 1115) of  
8 Division 9 of the Evidence Code, if the insured rescinds the  
9 agreement, it may not be admitted in evidence or disclosed unless  
10 the insured and all other parties to the agreement expressly agree  
11 to its disclosure. If the agreement is not rescinded by the insured,  
12 it is binding on the insured and the insurer, and acts as a release  
13 of all specific claims for damages known at the time of the  
14 mediation presented and agreed upon in the mediation  
15 conference. If counsel for the insured is present at the mediation  
16 conference and a settlement is agreed upon that is signed by the  
17 insured's counsel, the agreement is immediately binding on the  
18 insured and may not be rescinded.

19 (d) This section does not affect rights under existing law for  
20 claims for damage that were undetected at the time of the  
21 settlement conference.

22 (e) All settlements reached as a result of department-referred  
23 mediation shall address only those issues raised for the purpose  
24 of resolution. Settlements and any accompanying releases are not  
25 effective to settle or resolve any claim or dispute not addressed  
26 by the mediator for the purpose of resolution, nor any claim that  
27 the insured may have related to the insurer's conduct in handling  
28 the claim. However, for mediations conducted pursuant to  
29 paragraph (1) of subdivision (a) of Section 10089.70, the insurer  
30 and insured may agree to a complete settlement and release of all  
31 disputes related to the claim, including any claim the insured may  
32 have related to the insurer's conduct in handling the claim,  
33 provided the legal effect of the release is disclosed and fully  
34 explained to the claimant by the mediator.

35 Referral to mediation or the pendency of a mediation under this  
36 article is not a basis to prevent or stay the filing of civil litigation  
37 arising in whole or in part out of the same facts. Any applicable  
38 statute of limitations is tolled for the number of days beginning  
39 from the notification date to the insurer pursuant to Section  
40 10089.72, until the date on which the mediation is either

1 completed or declined, or the date on which the insured fails to  
2 appear for a scheduled mediation for the second time, or, in the  
3 event that a settlement is completed, the expiration of any  
4 applicable three business day cooling off period.

5 ~~SEC. 11.—~~

6 *SEC. 9.* Section 10089.84 of the Insurance Code is repealed.

O